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**New Vista Nursing and Rehabilitation Center and  
SEIU 1199, United Healthcare Workers East.**  
Case 22–CA–179497

May 25, 2021

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN McFERRAN AND MEMBERS KAPLAN  
AND RING

The Acting General Counsel seeks a default judgment in this case on the ground that New Vista Nursing and Rehabilitation Center (the Respondent) has failed to file an answer to the Compliance Specification and Notice of Hearing (“compliance specification”).

On June 21, 2017, the National Labor Relations Board issued an Order<sup>1</sup> that found, among other things, that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by unilaterally implementing a new health insurance plan without providing SEIU 1199, United Healthcare Workers East (the Union) notice and an opportunity to bargain over the changes. The Board’s Order directed the Respondent to rescind the changes upon the Union’s request and to make all affected employees whole, with interest, for any losses they suffered or expenses they incurred as a result of the unlawfully implemented changes in healthcare insurance. On October 5, 2017, the United States Court of Appeals for the Third Circuit entered its judgment enforcing the Board’s Order.<sup>2</sup>

On December 22, 2020, the Regional Director for Region 22 issued the compliance specification, which alleged the amounts due under the Board’s Order and notified the Respondent that it was required to file an answer by January 12, 2021, in conformity with the Board’s Rules and Regulations. By letter dated January 14, 2021, Region 22<sup>3</sup> advised the Respondent that it had not received an answer to the compliance specification and that, unless an answer was filed by January 21, 2021, a motion for default judgment would be filed. To date, the Region has not received an answer to the compliance specification.

On February 17, 2021, the Acting General Counsel filed a motion to transfer the case to the Board and a motion for

default judgment. Thereafter, on February 23, 2021, the Board issued an Order transferring proceeding to the Board and Notice to Show Cause why the Acting General Counsel’s motion for default judgment should not be granted. On March 9, 2021, the Respondent filed a response to the Notice to Show Cause.

The Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.56(a) of the Board’s Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Here, it is clear that the Respondent had adequate notice of its obligation to file a timely response as well as the consequences of failing to do so. The compliance specification in this case affirmatively states that unless an answer is received by January 12, 2021, “the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true.” Further, undisputed allegations in the Acting General Counsel’s motion disclose that the Region, by letter dated January 14, 2021, extended the deadline for the Respondent to file an answer and provided an additional warning that unless an answer was received by January 21, 2021, a motion for default judgment would be filed. To date, the Region has not received an answer to the compliance specification from the Respondent.

The Respondent did, however, file a response to the Board’s Notice to Show Cause. It states, in pertinent part:

Respondent denies any and all claims that the Respondent has failed to answer the Compliance Specification. This Facility, like other long-term care facilities is located in New Jersey have confronted the numerous challenges of the COVID-19 crisis.<sup>4</sup>

We find that the Respondent’s response to the Board’s Notice to Show Cause is insufficient. Regarding the

<sup>1</sup> Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Kenneth W. Chu issued on May 4, 2017 (JD(NY)-10-17).

<sup>2</sup> No. 17-2767 (unpublished decision).

<sup>3</sup> On January 13, 2021, the General Counsel issued an order transferring this case from Region 22 to Region 29. Nonetheless, Region 22 emailed the Respondent this reminder letter. On February 1, 2021, the Acting General Counsel issued an order transferring this case from

Region 29 to Region 1. We will hereinafter collectively refer to the Regions in this case as “the Region.”

<sup>4</sup> The Respondent also states in its response that it is “prepared for and will attend the March 23, 2021 hearing and present evidence contesting the allegations contained in the Board’s Order to Show Cause.” However, the hearing to which the Respondent refers was scheduled by the Region for the purpose of resolving any dispute over the allegations in the compliance specification, and its occurrence was contingent on the Respondent filing a sufficient answer to the compliance specification.

Respondent's contention that it has not failed to file an answer to the compliance specification, the Respondent does not identify, nor does the record reflect, any correspondence with the Regions to support this assertion. See *Black's Railroad Transit Service*, 338 NLRB 1148, 1148-49 (2003) (rejecting a respondent's claim that it submitted a timely answer where it failed to show that an answer was sent to the Regional Office). The response asserts that the Respondent has confronted challenges arising from operating a nursing home facility during the COVID-19 Pandemic, but it has not provided any specific explanation as to how or why these challenges prevented it from filing an answer to the compliance specification. Cf. *SPCA in Cattaraugus County Inc.*, 360 NLRB 742, 742 (2014) ("[T]he [r]espondent offers no specific reason for not filing an answer, and instead offers a more general explanation that the failure to file was attributable to individuals no longer associated with the [r]espondent. . . . [W]ithout more, the circumstances described in the [r]espondent's opposition are insufficient to establish good cause.").

Finally, we note that the Respondent has been represented by counsel at all stages of this matter. See *Electra-Cal Contractors*, 339 NLRB 370, 370 (2003) (observing that, where respondents are represented by counsel, good cause will not be "lightly found"). Despite receiving the compliance specification and the Region's warning letter, the Respondent's counsel did not request an extension of time to file an answer or otherwise discuss the Respondent's COVID-related circumstances with the Region. This failure is incompatible with a finding of good cause. See *Dong-A Daily North America*, 332 NLRB 15, 16 (2000) (observing that "failure to promptly request an extension of time to file an answer is a factor demonstrating lack of good cause") (internal quotations omitted); *Odaly's Management Corp.*, 292 NLRB 1283, 1284 (1989) (finding respondent's failure to file an answer until one month after the Board issued a notice to show cause and after previously ignoring at least three notices by the Region insufficient to demonstrate good cause).

In the absence of good cause being shown for the lack of a timely answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of reimbursement due to affected employees are as stated in the compliance specification, and we order the Respondent to pay those amounts, plus interest accrued to the date of payment.

<sup>5</sup> There is a minor discrepancy between par. 14 of the compliance specification and the appendix attached thereto with respect to compensation owed to Evangeline Dancel. It appears that, due to an inadvertent calculation error, the amount of reimbursement owed for an expense

## ORDER

The National Labor Relations Board orders that the Respondent, New Vista Nursing Home and Rehabilitation Services, Newark, New Jersey, its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amount following their names, plus interest accrued to the date of payment as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010):

Veronica Anonyou: \$1,059.00

Carlos Cosme: \$226.00

Evangeline Dancel: \$12,687.85<sup>5</sup>

Ramona Delos Santos: \$20,678.70

Leamon Dwah: \$1,832.17

William Green: \$560.00

Tammy Hare: \$703.00

Apan Harris: \$195.00

Charles McCoy: \$918.00

Helena Wiley McCoy: \$4,198.80

Frances Sherman: \$105.00

Robin Sutton: \$936.82

Lucas Tuberquia: \$408.81

Kendrick Villegas: \$698.00

Xorine (Xiandra) Villegas: \$1,254.00

Total: \$46,461.15

Dated, Washington, D.C. May 25, 2021

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Lauren McFerran, Chairman

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Marvin E. Kaplan, Member

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John F. Ring, Member

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incurred by Dancel on October 16, 2016, as reflected in the appendix does not account for a reduction in copay. We have therefore used the figure found in paragraph 14 of the compliance specification in calculating the total amount owed.